IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 1 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CONTROLLER OF ESTATE DUTY

Versus

VIPIN K NAGORI

Appearance:

1. ESTATE DUTY REFERENCE No. 1 of 1988
MR BB NAIK for Petitioner No. 1
MR MANISH J SHAH for MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 19/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion:-

"Whether, on the facts and in the circumstances of the case, the 1/2 share of the deceased in the HUF estate inherited from her husband was includible in her hands as a property passing or deemed to pass on her death ?"

2. Smt. Harigangaben expired on 19-2-1977 leaving behind two sons Jamnadas and Vipin and a daughter. Her husband Kanaiyalal had expired on 20-2-1971 after making a will dated 21-4-1969. By the said will, he had bequeathed his undivided interest in all the property of the Kanaiyalal HUF upon the HUF consisting of his two sons Jamnadas and Vipin and his wife Harigangaben and he directed his executors to give his undivided interest to the HUF of Kanaiyalal as an independent owner thereof.

On the death of Harigangaben, the Assistant Controller of Estate Duty held that upon the death of Kanaiyalal, Harigangaben had acquired interest in the property of the HUF which passed on her death. He took the view that under Section 3(2) of the Hindu Women's Right to Property Act, 1937, the widow of a member of the HUF steps in the shoes of her husband and her husband's interest in the joint family property would vest immediately upon his death on the widow. Hence, Harigangaben acquired the rights of her deceased husband in the HUF property on 20-2-1971 and in view of the provisions of Sections 6 and 14 of the Hindu Succession Act, 1956, Harigangaben became absolute owner of her husband's share in the HUF property and on that basis, the Assistant Controller determined the value of Harigangaben's share in the HUF as acquired at the time of her husband's death at Rs.85,329/- and included the same in her taxable estate.

3. In the appeal, the Appellate Controller accepted the contention of the accountable person that since Kanaiyalal had bequeathed his undivided interest in all the property of the HUF upon the smaller HUF consisting of his two sons and his wife Harigangaben and since the HUF of Kanaiyalal Harilal had become an independent owner of the property under the said will, Harigangaben had not acquired any interest in the HUF property upon the death of her husband. Accordingly, the Appellate Controller deleted the inclusion of Rs.85,329/-.

4. When the revenue carried the matter before the

Tribunal, there was difference of opinion between the Judicial Member and the Accountant Member. While the Judicial Member expressed his opinion in favour of the revenue, the Accountant Member expressed his opinion in favour of the accountable person. On a reference under Section 63(11) of the Estate Duty Act, the third member i.e. the Vice President of the Tribunal agreed with the view of the Accountant Member. Accordingly, the appeal filed by the revenue was dismissed by majority opinion. Hence, this reference at the instance of the revenue.

5. Mr BB Naik, learned counsel for the revenue has vehemently submitted that when Kanaiyalal expired on 20-2-1971, he had left behind him a female relative in Class I i.e. his wife and, therefore, under Section 6 of the Hindu Succession Act his wife acquired an interest in the share of the Kanaiyalal HUF property upon notional partition of the HUF properties immediately prior to the death of Kanaiyalal.

In the alternative, Mr Naik submitted that in any view of the matter at the time of her death Harigangaben was a member of the smaller HUF and, therefore, upon her death, her coparcenary interest in the HUF property ceased and, therefore, the property was deemed to pass on her death under the provisions of Section 39 of the Estate Duty Act, 1953.

As the next alternative, Mr Naik submitted that in any view of the matter, deceased Harigangaben had a right of maintenance over the HUF property and when the said beneficial interest ceased upon her death, the liability to pay estate duty accrued under the provisions of Section 40 of the Act.

6. On the other hand, Mr MJ Shah learned counsel for the assessee has submitted that the Tribunal has rightly held by majority that Kanaiyalal had bequeathed his undivided share in the HUF to the smaller HUF consisting of his two sons, Jamnadas and Vipin and his wife Harigangaben and, therefore, Harigangaben did not acquire any interest upon the death of her husband Kanaiyalal on 20-2-1971. It was further submitted that the alternative submissions being made by the learned counsel for the revenue are outside the scope of the present reference, since the present reference is only concerned with the question whether Harigangaben had inherited any share of the deceased in the HUF estate upon the death of the husband.

7. Having heard the learned counsel for the parties,

we are of the view that there is considerable substance in the submissions made by the learned counsel for the assessee. As per the settled legal position, and as embodied in the main part of Section 6 of the Hindu Succession Act, 1956, at the time of death of Kanaiyalal on 20-2-1971, his undivided interest in the HUF property devolved upon the legatee of the will executed by Kanaiyalal on 21-4-1969. That legatee was a smaller HUF consisting of Jamnadas, Vipin and Harigangaben. Since the undivided interest of Kanaiyalal devolved upon the said HUF, Harigangaben in her individual capacity did not inherit any portion of the said undivided interest of Kanaiyalal in the HUF property.

8. The entire basis of the order of the Wealth Tax Officer was that under Section 3(2) of the Hindu Women's Right to Property Act, 1937 (hereinafter referred to as "the Act of 1937"), Harigangaben, widow of Kanaiyalal stepped into the shoes of Kanaiyalal as far as the latter's interest in the HUF property was concerned, and that the said right of hers ripened into absolute ownership under Section 14 of the Hindu Succession Act, 1956.

Admittedly when Kanaiyalal expired on 20-2-1971, the relevant legislation which was enforceable was the Hindu Succession Act, 1956. Hence it is difficult to appreciate as to how Harigangaben acquired any rights under the said Act of 1937. She would have inherited a part of her husband's undivided interest in the HUF property if her husband Kanaiyalal had died intestate, but since Kanaiyalal had already executed a will dated 21-4-1969 bequeathing his undivided interest in the HUF property on the HUF of his two sons and his wife Harigangaben, it was the said HUF which inherited the undivided interest of Kanaiyalal in the HUF property and not Harigangaben in her individual capacity. In this view of the matter, the submission being made on behalf of the revenue is thoroughly misconceived and calls for no further discussion.

9. Coming to the question of applicability of Section 39 of the Act, that provision would apply only when there is cessation of coparcenary interest. Since a female cannot be a coparcener under the Mitakshara law, the interest of Harigangaben in the smaller HUF at the time of her death cannot be said to be coparcenary interest. In this connection, the following paragraph from "Mulla - Principles of Hindu Law", 17th Edition, Chapter XII (Vol. 1) is required to be reproduced:-

"217. Females cannot be coparceners - No female can be a coparcener under Mitakshara law. Even a wife, though she is entitled to maintenance out of her husband's property and has to that extent an interest in his property, is not her husband's coparcener. Nor is a mother a coparcener with her sons neither a mother-in-law with her daughter-in-law. There can be no coparcenary between a mother and daughter among devadasees. Nor could a widow succeeding under the Hindu Women's Rights to property Act to her husband's share in a joint family be a coparcener."

Hence the provisions of Section 39 of the Estate Duty Act were also not applicable.

10. As regards the alternative submission made by Mr Naik for the revenue that even if Harigangaben did not inherit any part of the undivided interest of Kanaiyalal in the HUF property on death of Kanaiyalal on 20-2-1971, at least at the time of her death on 19-2-1977, Harigangaben's interest in the smaller HUF did come to an end and that the value of the said interest was exigible to estate duty, the contention is certainly beyond the question referred to this Court. As regards this aspect Mr Naik's submission is that since the entire controversy has arisen upon the death of Harigangaben and the question is about the liability to pay estate duty upon her death, this Court may undoubtedly redraft the question.

11. Though prima-facie attractive, the contention does not deserve to be accepted. The Wealth Tax Officer had determined the share of Harigangaben in the undivided interest of Kanaiyalal in the larger HUF and that too at one half of the interest of Kanaiyalal. As explained above, that stand is not sustainable as Harigangaben had not acquired any property in her individual capacity upon the death of Kanaiyalal, in so far as the HUF property is concerned. The question about the quantum of Harigangaben's right to maintenance and the value thereof are questions of fact which would require detailed investigation. We have, therefore, not permitted the learned counsel for the revenue to urge any such contention which is not referable to any material on record and regarding which no submissions were made on behalf of the revenue either before the Commissioner of Wealth Tax in the assessee's appeal or even in the revenue's appeal before the Tribunal. Harigangaben expired on 19-2-1977 i.e. more than 25 years ago and this reference is also pending before this Court since

1988. In the meantime, the Estate Duty Act is also repealed. In the above view of the matter and also in view of the fact that the alternative questions sought to be raised by the learned counsel for the revenue do not arise from the order of the Tribunal, we have not permitted any new question to be raised at the hearing of this reference.

12. In view of the above discussion, our answer to the question referred to us is in the negative i.e. in favour of the assessee and against the revenue.

13. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(K.A. Puj,J)

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